

**BRIGHAM CITY PLANNING COMMISSION  
TUESDAY, FEBRUARY 19, 2008 – 6:00 PM  
BRIGHAM CITY COUNCIL CHAMBERS**

<b>PRESENT:</b>	Joan Peterson	Chairperson
	Barbara Poelman	Vice-Chairperson
	Lynda Berry	Commissioner
	Roger Handy	Commissioner
	Deon Dunn	Alternate (Acting as Commissioner- excused 7:17 p.m.)
	Paul Fowler	Alternate (Acting as Commissioner)

<b>ALSO PRESENT:</b>	Ruth Jensen	City Council Liaison
	Jared Johnson	Community Development Manager
	Mark Teuscher	City Planner
	Eliza McGaha	Secretary

<b>EXCUSED:</b>	Reese Nielsen	Commissioner
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**AGENDA:**

WORK SESSION – AGENDA REVIEW

REGULAR MEETING

PLEDGE OF ALLEGIANCE

APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES

PUBLIC COMMENT *(Per Utah Code, will receive input only, no decision can be made)*

PUBLIC HEARING / APPLICATION #2999 / PRELIMINARY PLAT - MIKE SHAW SUBDIVISION / 330 EAST 200 SOUTH / MIKE SHAW

PUBLIC HEARING / APPLICATION #2998 / KOLONKO SUBDIVISION / 235 WEST 700 NORTH / KENNETH KOLONKO

DISCUSSION:

**REGULAR MEETING:**

Chairperson Peterson opened the regular meeting at 6:30 p.m. Commissioner Berry led the Pledge of Allegiance.

**APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES:**

There were no minutes available for approval.

**PUBLIC COMMENT:**

There was no public comment.

**PUBLIC HEARING / APPLICATION #2999 / PRELIMINARY PLAT - MIKE SHAW SUBDIVISION / 330 EAST 200 SOUTH / MIKE SHAW**

This is a 2-lot subdivision located approximately at 33 East 200 South. The property owner is Dr. Mike Shaw. He is requesting a deferral of sidewalk. That area ranks a 6 on the Pedestrian Sidewalk Master Plan scale.

**MOTION:** A motion was made by Commissioner Poelman to open the public hearing for application #2999. The motion was seconded by Commissioner Handy and passed unanimously.

Mike Shaw, applicant, came forward. He stated that he wanted to correct a misstatement in the Staff evaluation that said there was a plan for a future single family dwelling on the back lot. Dr. Shaw stated that there is no plan for a future single family dwelling on the back lot. He said they loved the trees, orchards and open space in Brigham City, that's why they moved here. They purchased their home because it had an empty lot behind it with an orchard and a place for a garden. They used that orchard and garden to teach their children about a rural lifestyle. When they moved, they didn't want to give up the orchard. They thought if they separated the lot from the home they could keep and maintain it and sell the home. That is their sole purpose in keeping the back lot; it was never their intent to build on it. He said he didn't realize the financial burden of subdividing a lot.

Dr. Shaw said that he had been asked to put in a pipe, to pipe an open ditch; which he saw some logic in doing. He also stated that he had been asked to put in a sidewalk that would go nowhere and he sees no benefit in doing that. He commented that as each of these financial burdens come to his family; it makes it less likely that they will be able to keep that property as an orchard. They do not want to sell that lot and build a house there; they want to keep it as an orchard. He stated that if it is the goal of Brigham City to close off every open spot and build a house, then he thinks a sidewalk policy like this is a good place to start.

Dr. Shaw explained that the house faces 200 South; the orchard lot is behind the house. 200 South can be very busy. The worst time of day is when cars come down the canyon at about 50 mph; they do not slow down for the kids going to school. It is a very dangerous situation. He said they have called the City to ask for help on that street. They were told that they needed to contact UDOT as it is their street. They have called the school for help on that street. The School Board told them they needed to talk to UDOT as it is their street. They contacted UDOT and they sent him a huge packet of information he would have to go through. He would have to count the number of children that crossed the street and do all of that in order to get a crosswalk, a speed bump or anything done on that street. When it came time to talk about sidewalk, he contacted UDOT; they said they do not want a sidewalk there. He said that he had a letter from UDOT stating that they do not want a sidewalk there; it is their right-of-way, it is their street. Dr. Shaw stated that he stands on that; UDOT does not want a sidewalk there.

Dr. Shaw continued that 400 East is a small side street, which goes from 200 South to the cemetery and stops; it does not continue on there. 400 East is one of the last streets in the city to get snow removal. It is one of the last streets in the city to get leaves vacuumed up. He said he had to call the City a couple of times to remind them that there are leaves on that street. He commented that to him, in living there, the City considers that small block as a low priority for maintenance. When they moved in, they fenced the lot. Dr. Shaw said he came into the City and asked to know where

the sidewalk plans were so his fence would not interfere with it. The comment he received from the City, at that point, was that there is no plan for a sidewalk and his fence project was approved. He stated that it is very frustrating to him that now when he wants to split off the back lot and keep it as an orchard, all of a sudden there is a high priority for sidewalk at that spot. He said he realizes that the City speaks with a lot of frustrated people, but that is his frustration here. He has lived there for five years and there has been no plan for a sidewalk, there has been no one talking about it except, all of a sudden, he wants to keep his orchard and the City wants him to put in a sidewalk, in front of an orchard, that goes nowhere.

Dr. Shaw commented that he has that financial burden to think about and decide whether he can keep the lot as an orchard or not. He said he would like to address the Street Division's reasoning for putting in a sidewalk; listed on the third page of the Staff evaluation. Dr. Shaw read the Street Division comments from the evaluation. *Number A, UDOT did not place an ADA ramp on this corner, making this the only corner in the intersection without one. Sidewalk installation here would add the final ramp.* He commented that the statement was true and said that about 1.5 to 2-years ago, UDOT came down 200 South and put ADA ramps on most of the corners. On his intersection, they put three in and did not put one on his corner. He commented that he did not think UDOT forgot that there was a corner there or that it was an oversight. He thinks they planned it very carefully and they do not want one there; just as their letter states, they do not want a sidewalk; they do not want an ADA ramp.

Dr. Shaw said he believes the reason UDOT does not want a sidewalk there is because of safety. There is already a crossing there. There is a school crosswalk on the other side of 400 East. When they started to install the three ADA ramps on his intersection, he went and asked them why they are only putting in three and not one on his corner. He said they gave him two reasons, the first being that there is no plan for a sidewalk. The second reason is that the school crossing is on the other side of 400 East; which is where the middle school is. The middle school is located on the east side of 400 East, about two blocks north of Dr Shaw's home. The school crossing is already on that side of 400 East which goes across 200 South and so UDOT said it was not needed.

Dr. Shaw said that brings up the issue of a school crossing area, making it all the more important to have sidewalk installed as mentioned by the Street Division. The school crossing is on the other side of 400 East. He asked that they not add another place for children to be in danger. He said he fought with UDOT over this and the reason they moved out of that house was because of how dangerous that street is before school. He again asked that they not add another place for children to cross that street; it is dangerous enough. He brought pictures that show there is a crosswalk on the other side of 400 East. He showed the Commission where his house is located and where the school crossing is. The crossing has painted lines with the crosswalk sign; however, cars do not obey that or slow down. Vehicles come out of the canyon doing 50 mph and they do not care about the crosswalk there. He reemphasized the reasoning for not putting a sidewalk there.

Dr. Shaw read the next Street Division statement regarding sidewalk. *If installed, only one property remains to have a sidewalk installed to extend around the south and west sides of the block.* Dr. Shaw said that was an incorrect statement as there is no sidewalk on any portion of their block on 200 South or 400 East. On 200 South, the Street Division statement is true; there is only one other property needing sidewalk. Along 200 South, there is only one property on that entire side of the street from Main Street to up the canyon that has a sidewalk on the south side of the street. 200 South has only one side of the street with sidewalk. So if they were to install sidewalk, they would be putting in a piece of concrete that increases the heat, maintenance and goes nowhere. On 400 East, when this application is approved, there will be four properties. If sidewalk is required along here, there would be less than half of 400 East that would have sidewalk; which would make the

statement, that there would be one more property remaining to install sidewalk, incorrect. Dr. Shaw presented photos to show there is no sidewalk on any of those lots that go toward the cemetery. He again stated that sidewalk, in that location, would be on less than half the block, serving no one and going nowhere except to add a financial burden to him and his family and making it less likely that they will be able to keep that lot as an orchard.

Commissioner Poelman asked about his children crossing 400 East. Dr. Shaw replied that his children would cross 400 East and then either he or his wife would walk them across 200 South. There is a painted crosswalk with signs there. Commissioner Poelman asked why the School District did not do something about that with UDOT. Mr. Teuscher said it would be the City, not the School District, that would put a crossing guard there.

Dr. Shaw said it has been a huge frustration for them and the reason they moved out of that house is because his wife had to walk their children across that street. He said there have been three near-misses where his daughter almost got hit and he almost got hit crossing with his son; which is a reason to not put another ADA ramp there. Dr. Shaw stated that he believes that UDOT knows that because they have heard it from him, if not from other parents, and he believes they decided not to put one there because they do not want one there. He asked the Commissioners to listen to the people who own the street and to someone that has lived there, and asked that they recommend that the deferral be accepted.

There are two houses to the south of Dr. Shaw's property. Dr. Shaw commented that the orchard lot is big enough that it could handle a home being built there but that will not happen while he owns it. Commissioner Poelman asked if there were other children on 400 East. Dr. Shaw replied that there is a family that home schools their children, and an elderly lady lives in the house behind them. There are not any other children on that street but there are other children who pass that way. There is a girl that walks to school with a phone in her hand and texts, and does not watch the street. Dr. Shaw said he believed that most of the children come from areas behind the cemetery and come up 400 East and use the crosswalk. There are sidewalks going north to the middle school after crossing 200 South. Mr. Teuscher commented that 300 East has sidewalk all the way up to 200 South and 500 East has sidewalk on one side of 200 South. Kids coming up on either of those two blocks have to walk along the grassed areas to get to the crossings.

Dr. Shaw stated that from Main Street to about 700 East, the only place where there is sidewalk is by the tabernacle and one other lot along the south side of 200 South. In watching people walk along that street, they do not use that sidewalk; they just continue along in the gutter or go across to the other side of the street. Most people walking on the other side of the street use the sidewalk. He commented that a one lot sidewalk is really worthless and if they want to do sidewalk, the whole block should be done. Mr. Teuscher commented that by traffic law, every intersection has a crossing regardless of whether it is marked or not.

Paul Fowler asked if there were any plans to put sidewalk around the rest of the lots by Dr. Shaw's lot. Mr. Teuscher suggested finishing the public hearing and then he would address Mr. Fowler's comment.

There is a small, well-maintained shed, about 8-feet by 10-feet in size, located in the back corner of the orchard lot. Mr. Teuscher commented that the shed does not have a permit requirement, by building code, and it would probably be declared a legal nonconforming structure. Dr. Shaw said he read through the codes listed on the Brigham City website which states: *Recreation or ornamental structures such as gazebos, swimming pools, bath houses, tennis courts, ect., accessory to, on a lot adjacent to, and sharing a lot line with a lot occupied by a primary use, when both lots are under*

*the same ownership, is permitted.* That would have to be addressed at such time the lot is sold. Commissioner Poelman asked about the traffic after school. Dr. Shaw replied it is much less busy after school as the morning commuters are not traveling that route at that time of day. Commissioner Poelman asked Dr. Shaw who he went to after he was told they would not do a crossing guard. Dr. Shaw replied that he went to both the City and the School District, both of which referred him to UDOT. Commissioner Handy asked Dr. Shaw what the kids do when it snows and Dr. Shaw replied that they walk in the street.

Mr. Teuscher said a warrant study would have to be done and there probably is not a sufficient amount of students crossing there to justify one. Each school has a traffic plan and for the Middle School, it does not show school crossings there. The City had UDOT do a speed study. The speed along 200 South is 40 mph, at that location, from about the church down to about 200 East. The speed study showed that 80-percent of the traffic is not exceeding the speed limit. Last year, the City had UDOT look at putting in a traffic light at 600 East. There is not enough traffic going through the four quadrants of that intersection to justify a light.

Leon Jeppesen commented from the audience that the speed limit stays 40 mph all the way to Main Street and down Main Street to 300 North before a different speed limit sign is seen; other than the 40 mph sign on 600 East. He said if you come down the canyon and go north, the first time a speed limit sign less than 40 mph is seen, is on about 300 North.

**MOTION:** A motion was made by Commissioner Poelman to close the public hearing for application #2999. The motion was seconded by Commissioner Berry and passed unanimously.

Mr. Teuscher explained that in 2006, the Planning Commission recommended the development of the Pedestrian Sidewalk Master Plan. That Plan was recommended to City Council and they adopted that Plan in October 25, 2006. Some adjustments were made to it and it was amended in 2007. The City is very concerned about sidewalk. There are large components of the city that do not have sidewalk; especially in the northwest quadrant. In the northeast and southwest quadrants there are large areas that have no sidewalk. The Plan prioritizes the roads that do not have sidewalk. There are six categories ranging from 1, lowest, to 6, highest. The priorities for creating that were identifying attractors. The attractors are church properties, government properties, schools, parks and proximity to commercial uses that people walk to. Each segment of sidewalk was identified, whether it had sidewalk or not, and ranked based upon the amount of attractors that would generate pedestrian activity. All segments rank differently depending upon where they are located and how close to attractors they are. Schools, churches and parks tend to generate a lot because in certain areas there are a lot of those in close proximity of each other. In this particular case, it does rank as a 4. It is in very close proximity to 300 East, which has sidewalk on both sides of the block but does not have any sidewalk from 300 East to 400 East.

Mr. Teuscher continued to explain that the reason for creating the Pedestrian Sidewalk Master Plan was that the City was getting a number of sidewalk deferral requests and there was no way to prioritize them. In the amendment, three categories were created; low, medium and high in regards to when deferrals will and will not be considered. Anything that ranks between 7 and 10 will not be considered for a deferral. Anything ranking between 6.9 and 4 will be reviewed for deferral as in the case of Dr. Shaw's subdivision, which ranks a 6. Anything ranking 3.9 to 0 will always be automatically deferred. The Street

Division is very supportive of the Pedestrian Sidewalk Master Plan. There are so many areas within the City that do not have sidewalk and the City Council felt that this Plan would help address that issue.

Commissioner Handy asked what the financial burden would be to put sidewalk in a development like this one. Mr. Teuscher replied that in this particular case it would be fairly substantial because the sidewalk would also constitute the intersection where an ADA access would need to be put in. UDOT would have to be consulted because it is their road and very rarely do they pay for that. When public improvements are put in along 200 South they would have to be to UDOT standards and typically they put that burden on the developer. Greg Hansen commented from the audience that sidewalk typically runs \$10 to \$12 per foot. A handicap ramp runs about \$3,500. Dr. Shaw said with a handicap ramp included in that, it would cost about \$7,000 to \$8,000 to install the sidewalk. Mr. Teuscher reminded everyone that a deferral means the sidewalk will not be required, at this time, but will, at some point, be installed. The property owner is still responsible to install the sidewalk unless that burden is released by the City or UDOT. The public right-of-way extends from property line to property line. There is curb and then so much distance from the back of the curb to the property line that is in the public right-of-way. At any point in time, the City can initiate sidewalk being installed. The deferral is recorded on the property so when someone purchases a property with a recorded deferral, it is attached.

Commissioner Poelman commented a deferral does not mean it is never going to be done, it means that at some time when the other property owners install sidewalk, they will also. She said it seemed to her that giving a deferral would not hurt the City in a situation where there could be a deferral. Also the City would be better off in working with a crossing guard in the morning than in putting in a sidewalk that is going nowhere and will not help the situation and, according to what they have heard from Dr. Shaw, would make it even less safe.

Commissioner Handy commented that a crossing guard in the morning would cost a lot more money. Commissioner Poelman said that may be, but one child would be worth it. Commissioner Handy replied that it was worth it, if you have the taxes to pay for it. He said his prejudice is to always put in sidewalk because he believes it to be a safety issue. He is concerned about people having to walk out into the road because there is no sidewalk, as Dr. Shaw had explained. If there is sidewalk there, whether it goes to nowhere or not, there is still somewhere people do not have to walk on the road and can walk on a flat safe surface. He stated that he is biased to putting in sidewalk and would be in this case. He said he felt a little better knowing that the deferral still obligates the property owner and he said he has no desire to add another \$8,000 to Dr. Shaw's costs without a more concrete plan as to what is going to happen in that area. Over the long run he believes they will be making the school kids more safe by putting in sidewalks rather than deferring them.

Mr. Teuscher clarified that there would be two separate motions; the subdivision preliminary plat to the Land Use Authority and the sidewalk deferral to the City Council.

**MOTION:** A motion was made by Commissioner Handy to forward application #2999, with the recommendation to approve, to the Land Use Authority, which in this case is the City Planner, with the stipulation that this change must comply with the Staff evaluation and with the findings of fact that the

applicant will comply with the Staff evaluation and that such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use is in compliance with the Brigham City General Plan. The motion was seconded by Commissioner Berry.

Discussion: Commissioner Poelman wanted to clarify that the motion does not include sidewalk deferral. Mr. Teuscher said the deferral is not included in this motion and would be a separate motion to City Council.

The motion passed unanimously.

**MOTION:** A motion was made by Commissioner Poelman in regard to the sidewalk deferral for application #2999 and recommended to the City Council that it be deferred, at this time, until other sidewalks are placed in that area; based on the finding of fact that the sidewalk, at this point, will not connect anywhere on the 200 South or 400 East side and, at some time in the future, when the other sidewalks are put in that these lots, 1 and 2, will also be included in the improvement. The motion was seconded by Deon Dunn.

Discussion: Paul Fowler commented that Dr. Shaw made several corrections to the information they had; one of those being the fact that, currently, there is no plan to put a home on that lot. Based on that corrected information, if there was a home going to be built on that lot then this would be the best time to do a sidewalk. He suggested the motion include that this information should be updated and the correct information inputted. Commissioner Poelman said that was acceptable to her and was seconded by Commissioner Berry. Commissioner Handy commented that he expected this to pass but would vote against it for the reasons he had stated earlier.

Vote: Barbara Poelman – aye  
Lynda Berry – aye  
Deon Dunn – aye  
Paul Fowler – aye  
Roger Handy – nay

The motion passed.

**PUBLIC HEARING / APPLICATION #2998 / KOLONKO SUBDIVISION / 235 WEST 700 NORTH / KENNETH KOLONKO:**

This is a request to subdivide a parcel located at 235 West 700 North. Currently,

there is a structure on the property that was originally developed as a duplex. The duplex, at one time, was a legal structure within the original R-2-8 zone. At that time, the minimum lot size was 8,000 square feet. Since then, the area was rezoned to a single family residential R-1-8 zone. Mr. Kolonko went to the Appeal Authority and they granted a legal nonconforming status to the property, which still makes it a minimum 8,000 square foot lot. Mr. Kolonko is proposing to subdivide off the back portion as a lot. This is a residential single family zone and the primary use of that lot would be a residential use for a home at some point. This is preliminary plat.

**MOTION:** A motion was made by Commissioner Handy to open the public hearing for application #2998. The motion was seconded by Commissioner Poelman and passed unanimously.

Leon Jeppesen came forward and stated that he owns the property directly east of the Kolonko property. He wanted to have one thing made known and put into the minutes; that being, the Box Elder Creek Water Users Association's main ditch for stream A runs through the south end of this property. The subdivision plat shows a total distance of about 165-feet from 700 North. This irrigation ditch runs at about 158-feet. There is a collection box on 300 West that it goes into, where it combines with the North Field stream, goes north and across 700 North. Mr. Jeppesen said he felt this information needed to be put on it as part of the subdivision. He stated that he had no objection to the subdivision. He is representing himself and the Box Elder Creek Water Users Association. He said he talked to Mitch Cochran who asked him to represent the water company. They just wanted to make sure the easement is listed. He said he did not know if it is on the deed.

When he bought his property, there was a deeded right-of-way for this ditch. Lincoln Jensen sold him the lot and the parcel that is proposed for division is the part Lincoln kept, which passed to his son and then to Mr. Kolonko. He restated that he had no objection to the subdivision and commented that a nice lot would probably be preferable to what is currently there. He wanted to make sure there is an established right-of-way shown across there which may effect the placement of a home on it at some future date. At this time, there is a stake at what he assumed to be the south property corner. The collection box, which is about 30-inches square, on the irrigation stream, is approximately 6-feet north of that stake and it is on the City right-of-way.

Mr. Teuscher commented that there is a 10-foot public utility easement on the south property line. The Subdivision Ordinance does require that if there is a canal, the subdivider needs to show that. That will need to be something that is required. Typically, if they are going to alter it in any way, shape or form, the water users are required to sign-off on whatever changes or whatever needs to be done. Before final plat and preferably before preliminary plat is done, they need to get a letter from the water users agreeing that, whatever happens, the canal is protected. The new code will apply. In this case, it was not identified and it needs to be identified. Mr. Teuscher recommended that whatever action the Commission takes on this application, they should include that the irrigation ditch be identified and protected. Mr. Jeppesen inquired about the direction of the public easement. Mr. Teuscher replied that it is east/west, which will be new with the subdivision. Mr. Jeppesen said the ditch has been there for 49-years. It was put in and piped through the property about 25 to 30



years ago by the water company. Mr. Teuscher said it needs to be identified on the plat so if public utilities come through it is not damaged. Mr. Jeppesen stated that he went to the Appeal Authority meeting to state his concerns about the easement and they told him to come to this meeting and those concerns would be addressed. Mr. Teuscher told him they would take care of it.

**MOTION:** A motion was made by Commissioner Handy to close the public hearing for application #2998. The motion was seconded by Commissioner Poelman and passed unanimously.

Commissioner Handy asked if it would be appropriate if they had this revised to show the water area and bring it back before they act. Mr. Teuscher stated that since he is the Land Use Authority, he would not put it on hearing or make a decision until it is resolved, if they are concerned about. He said they could take care of it before he reviews it and make that change to the preliminary plat. Commissioner Poelman asked why in the Staff recommendations it was stated that the sidewalk deferral be forwarded to City Council. Mr. Teuscher replied that it was probably a mistake, due to cutting and pasting, and was inadvertently left in. He recommended doing two separate motions, one for the subdivision and one for the deferral of sidewalk. Chairman Peterson said she thought they could make a motion to include the water rights. Mr. Teuscher said the water issue was a technicality that Staff was not aware of and the applicant should get with his engineer and identify it to make sure it is in an easement. It will not be scheduled for the Land Use Authority until the water company signs off on it. It will be handled whether the application is continued or forwarded.

**MOTION:** A motion was made by Commissioner Poelman to forward application #2998 with a recommendation for approval to the City Planner, as the acting Land Use Authority, with the stipulations that it must comply with the Staff evaluation; based on the findings of fact that the applicant will comply with Staff evaluation and such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use is in compliance with the Brigham City General Plan. Also that the water use be clarified and identified and the water rights protected on the property. The motion was seconded by Commissioner Berry and passed unanimously.

#### **DISCUSSION:**

Chairperson Peterson asked if the new members of the Planning Commission could get copies of the sidewalk ordinance. Commissioner Handy asked for a hard copy of the General Plan. Mr. Teuscher said he would get copies of those to all the members.

**MOTION:** A motion was made by Commissioner Handy to adjourn. The motion was seconded by Commissioner Berry and passed unanimously.

The meeting adjourned at 7:30 p.m.

Chairperson Peterson informed the group that they did not act on the deferral request on

application #2998. Mr. Teuscher said Staff could send him a letter to inform him there was no final plan. Commissioner Handy commented that it died for lack of a motion. Chairperson Peterson said that would work.

*This certifies that the regular meeting minutes of February 19, 2008 are a true and accurate copy as approved by the Planning Commission on March 18, 2008.*

Signed

  
Jeffery R. Leishman, Secretary